



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for the return of the security deposit.

By the landlords: as an application to keep the security deposit and to recover the filing fee associated with their application.

The landlords participated in the hearing and provided affirmed testimony. Landlord D.L. testified that he served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent May 24th, 2011, and provided a tracking number and confirmation of successful delivery on June 3rd, 2011. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. Landlord D.L. testified that pursuant to a written agreement, the month to month tenancy started on September 1st, 2010. D.L. stated that rent started at \$895.00 plus utilities because the tenant moved in with a co-tenant. He said however that by the end of the tenancy, the co-tenant had moved out and rent was reduced to \$800.00 per month with utilities. The tenant originally paid a security deposit of \$450.00, but that deposit was also reduced to \$400.00 and the landlords retained \$50.00 from the tenant for unpaid utilities.

D.L. said that the tenant declined to do a walk-through inspection at the end of the tenancy. He said that a walk through was conducted at the start of the tenancy; however condition inspection reports were not provided as evidence to the hearing.

In their documentary evidence, the landlords provided 5 photographs showing that the tenant left personal items behind when he moved out; these items included food in the freezer and in the kitchen cupboards, and two garbage bags. They also showed that the elements on the stove top needed additional cleaning; and a smear of toothpaste left on the bathroom wall.

The landlord also provided a copy of the original receipt showing that the tenant paid a security deposit of \$450.00.

D.L. said that he had receipts in his possession for the following expenses:

- | | |
|--|----------|
| - Change locks because the tenant only returned 1 of 2 keys: | \$ 23.52 |
| - Garbage disposal fee: | \$ 25.00 |
| - Cleaning for 7 hours @ \$25.00/hr: | \$175.00 |
| - Touch up paint: | \$ 50.00 |
| - Total: | \$273.52 |

Analysis

I accept landlord D.L.'s undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Concerning the landlord's claim; Section 23(3), (4), and (5) of the Act places the onus to complete condition inspection reports at the start and the end of the tenancy on the landlord. The landlord's claim was not supported by these reports, nor did the landlord provide receipts in support of his testimony for the repairs or additional cleaning. Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. I find that there is insufficient evidence to support the landlord's claim in its entirety.

The landlord provided photographic evidence that the tenant left personal items behind at the end of the tenancy. Based on the minimal amount of supporting evidence provided, I grant the landlord a nominal sum of \$140.00 as compensation for garbage removal, key replacement and additional cleaning as depicted in the photographs.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlords established a claim of \$140.00. Since they were partially successful, I find them entitled to a partial recovery of the filing fee for \$25.00 for a claim totalling \$165.00.

I authorize the landlords to deduct \$165.00 from the tenant's \$400.00 security deposit and pursuant to Section 67 of the Act, I grant the tenant a monetary order for the balance of \$235.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 29, 2011.

Residential Tenancy Branch